

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>TRINH LE</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 228,362
<b>NATIONAL BEEF PACKING</b>	)	
Respondent	)	
AND	)	
	)	
<b>WAUSAU INSURANCE COMPANIES</b>	)	
Insurance Carrier	)	

**ORDER**

Claimant appealed the April 16, 2001 Decision entered by Administrative Law Judge Pamela J. Fuller.

**APPEARANCES**

Chris A. Clements of Wichita, Kansas, appeared on behalf of claimant. D. Shane Bangerter of Dodge City, Kansas, appeared on behalf of respondent and its insurance carrier.

**RECORD AND STIPULATIONS**

The Appeals Board has considered the record and adopted the stipulations listed in the April 16, 2001 Decision and the September 1, 2000 Decision.

**ISSUES**

This is a post-award request for medical treatment. Judge Fuller initially decided this claim in a Decision dated September 1, 2000, in which the Judge awarded claimant a 7 percent permanent partial general disability for a January 22, 1997 work-related accident. The Board affirmed that award in an Order dated March 27, 2001.

Claimant now contends that she needs additional medical treatment and such treatment is directly related to the January 1997 accident. Claimant also contends that she is entitled to receive an award for her attorney fees. But, after conducting a February 8, 2001 hearing and reviewing the February 21, 2000 medical report of orthopedic surgeon Dirk H. Alander, M.D., and the October 6, 1999 report of orthopedic

surgeon C. Reiff Brown, M.D., that had been stipulated into the record, Judge Fuller denied claimant's requests for additional medical benefits and attorney fees.

Claimant contends Judge Fuller erred. Claimant argues that it would seriously prejudice employees if they were required to establish their need for post-award medical treatment through medical evidence. Claimant admits that she does not know if there is any medical treatment presently available that would benefit her. But claimant argues that it is not uncommon for injured workers to have occasional flare-ups that require therapy or prescription medication. Claimant requests the Board to reverse the Judge and order respondent to provide additional treatment. Claimant also requests the Board to order attorney fees at \$125 per hour for four hours, or \$500.

Conversely, respondent contends the April 16, 2001 Decision denying both additional medical benefits and attorney fees should be affirmed. In addition, respondent argues claimant has \$500 in unauthorized medical available to her and suggests she use that to acquire an opinion that she is in need of or would benefit from additional medical treatment.

The only issues before the Board on this appeal are:

1. Is claimant required to prove she would benefit from additional medical treatment and a direct relationship between that treatment and her January 22, 1997 work-related accident before she is entitled to receive an award for post-award medical benefits?
2. Under the facts presented, is claimant entitled to receive an award for attorney fees?

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After review the record compiled to date, the Board finds and concludes:

1. For the reasons explained below, the order denying claimant's request for medical treatment should be affirmed. But the Board reverses the denial of attorney fees and awards claimant \$500.
2. In a September 1, 2000 Decision, Judge Fuller awarded claimant a 7 percent permanent partial general disability for a January 22, 1997 accident and resulting upper extremity, shoulder and neck injuries. That Decision was affirmed by the Board on March 27, 2001.
3. The last physician to provide authorized treatment to claimant was Dr. C. Reiff Brown, who released claimant from treatment in October 1999. In his October 6, 1999 report to respondent, Dr. Brown stated:

"This patient, in my opinion, is at a point of maximum medical benefit and although rather highly symptomatic subjectively, I cannot think of any other treatment that might be of help to her."<sup>1</sup>

4. Claimant's last examination was performed by Dr. Dirk H. Alander in February 2000 pursuant to a pre-award court ordered independent medical evaluation. In his February 21, 2000 report, Dr. Alander opined: "At this time, I believe Ms. Le is at maximal medical improvement."

5. Claimant has not seen a doctor since Judge Fuller's September 1, 2000 Decision was entered. Claimant's present request for additional medical benefits rests solely on her contention that she is experiencing pain in the same part of her body as that caused by the January 1997 accident. Claimant has presented no other evidence to prove her present symptoms are related to the January 1997 accident or that there is any medical treatment that may benefit her. Claimant last worked for respondent on January 26, 1998, and she has not worked for wages since then. Claimant alleges that her neck and shoulder pain never resolved following the January 1997 accident. Furthermore, she denies her symptoms have been aggravated by any subsequent housework, caring for her two children or other activities.

6. Considering the approximate four years that have elapsed since the accident, the fact that claimant has been found to be at maximum medical improvement by at least two physicians and represented herself as such by proceeding to the June 22, 2000 Regular Hearing, together with the general lack of evidence that there is medical treatment available that would cure or relieve claimant's present symptoms, the Board concludes that claimant has failed to prove that her present symptoms are directly related to the January 1997 accident or that she presently needs medical treatment as a result of that accident.<sup>2</sup> Therefore, the Judge did not err by denying claimant's request for post-award medical treatment.

7. It is interesting to note that at the February 8, 2001 hearing before Judge Fuller on claimant's Application for Post Award Medical, respondent argued that claimant still had \$500 available in unauthorized medical to obtain a medical opinion on her need for additional treatment. Claimant did not dispute this assertion. But the Board notes that neither Judge Fuller's September 1, 2000 Decision nor the Board's March 27, 2001 Order affirming that Decision contain an order for unauthorized medical. Furthermore, at the June 22, 2000 Regular Hearing counsel for claimant denied there was a claim for unauthorized expenses.

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<sup>1</sup> Respondent's Ex. 2 to Tr. of Proceedings, February 8, 2001.

<sup>2</sup> K.S.A. 44-510h.

THE COURT: Is there a claim for unauthorized medical?  
MR. CLEMENTS: Claim was made, and paid, Your Honor.  
THE COURT: So no?  
MR. CLEMENTS: Yes. Just wanted to see if you were listening.<sup>3</sup>

8. Depending upon the circumstances, injured workers may decide to present medical evidence to establish their right to additional medical treatment. Although expert medical opinions are not required by the Workers Compensation Act, they may be determinative. The Board agrees with claimant that injured workers are at times disadvantaged when it comes to obtaining medical evidence for proving the need for additional medical treatment. The Board also agrees with claimant that this type of situation is well suited for a judge to order an independent medical evaluation. But the Board recognizes that the administrative law judges have the discretion to order medical evaluations. Additionally, the Board recognizes that injured workers have the burden of proof under the Workers Compensation Act.

9. The Board concludes that claimant's request for attorney fees should be granted in the sum of \$500. Claimant may be granted attorney fees for services rendered in proceedings for post-award medical benefits.<sup>4</sup> Upon claimant's request for additional medical benefits, respondent refused the request without authorizing claimant to see a doctor for further treatment recommendations. Respondent's assertion that claimant should first exhaust her unauthorized medical allowance is without merit. Under the facts presented, the Board concludes that claimant's request for additional medical benefits had merit and was made in good faith. The Board concludes claimant should receive a reasonable sum for attorney fees. Therefore, the Board finds the claim for four hours at \$125 per hour, or \$500, is reasonable for the services rendered at both the administrative law judge and appellate levels.

10. The Board adopts the findings and conclusions set forth in the April 16, 2001 Decision that are not inconsistent with the above.

### **AWARD**

**WHEREFORE**, the Board modifies the April 16, 2001 Decision entered by Judge Fuller to grant claimant \$500 in attorney fees.

The Board adopts the remaining orders set forth in the Decision that are not inconsistent with the above.

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<sup>3</sup> June 22, 2000 Tr. of Proceedings at 6.

<sup>4</sup> K.S.A. 44-536(g).

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of August 2001.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Chris A. Clements, Wichita, KS  
D. Shane Bangerter, Dodge City, KS  
Pamela J. Fuller, Administrative Law Judge  
Philip S. Harness, Director